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Settlement of commercial disputes

Investor-State Dispute Settlement Framework

Compilation of comments

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III. Compilation of comments

40. Republic of Indonesia

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A/International Investment Agreements (IIAs)

Question 1: Information on IIAs and their provisions on the settlement of investor-State disputes

As of December 31, 2017, the Republic of Indonesia has signed 64 bilateral investment treaties (BITs) among which 42 agreements are in effect and 22 agreements have been discontinued.

The Republic of Indonesia is a signatory to 9 Free Trade Agreements (FTAs),[1] 7 of them have Investment Chapter.

All 64 BITs contain provisions on the settlement of investor-State disputes. As for the FTAs, only the ASEAN-Hong Kong FTA does not have such provisions.

Question 2: Provisions for permanent courts or tribunals (as opposed to investor-State arbitration) in IIAs — Question 3: Provisions on appeal to investor-State arbitral awards in IIAs

As of December 31, 2017, no BITs or Investment Chapter in the FTAs to which the Republic of Indonesia is a party includes (i) any provision on permanent courts or tribunals; and (ii) any provision whereby investor-State arbitral awards may be subject to appeal.

Question 4: Provisions in IIAs on creation in the future of (a) a bilateral or multilateral appellate mechanism for investor-State arbitral awards; and/or (b) a bilateral or multilateral permanent investment tribunal or court

No BITs or Investment Chapter in the FTAs signed by Indonesia, contain provisions addressing the possible future creation of a bilateral or similar appellate mechanism to review investment treaty arbitral awards.

Question 5: Provisions on the amendment of the IIAs; provisions safeguarding investors' rights or providing for transitional arrangements in case of modifications or amendments of the IIAs

All BITs and FTAs signed by Indonesia contain provisions on amendment. As of December 31, 2017, no BITs or FTAs to which the Republic of Indonesia is a party include any provision safeguarding investors' rights or providing for transitional arrangements in case of modifications or amendments occurred.

B/Legislative and judicial framework

Question 6: Statutory basis or judicial mechanism to recognize and enforce judgments of international courts (as opposed to foreign arbitral awards)

There are no legal provisions or judicial organizations in the Indonesian legal system that deal with the recognition and/or enforcement of judgments delivered by "international courts". Recognition and enforcement of a judgment or decision made by a domestic court of foreign countries is subject to review by the Indonesian courts.

[1] AANZFTA (ASEAN-Australia-New Zealand), AIFTA (ASEAN-India), AKFTA (ASEAN-Korea), ACIA (ASEAN Comprehensive Investment Agreement), AJCEP (ASEAN-Japan), ACFTA (ASEAN-China), AHKFTA (ASEAN-Hong Kong), IJEPA (Indonesia-Japan), ICCEPA (Indonesia-Chile).

Question 7: Legislative provisions on appeal (as opposed to annulment) by State courts or arbitral tribunals against arbitral awards

In accordance with Article 70 Law Number 30 Year 1999 on Arbitration and Alternative Dispute Settlement, arbitral awards are only subject to annulment by the District Court of Jakarta (without any recourse to any appellate review). The decision of annulment by the District Court of Jakarta may be appealed before the Supreme Court which shall decide the matter as the court of final instance.